

February 20, 2003 - Letter from Education Under Secretary Eugene W. Hickok and Agriculture Under Secretary Eric M. Bost

Providing guidance on implementation of the No Child Left Behind Act by schools that operate school lunch programs under Provision 2 and Provision 3 of the National School Lunch Program

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Dear Colleague:

This is a follow-up to our letter of December 17, 2002, in which we promised to provide guidance on the implementation of the new requirements of Title I of the Elementary and Secondary Education Act (ESEA), as reauthorized by the No Child Left Behind Act (NCLB), by schools that operate school lunch programs under Provision 2 and Provision 3 of the National School Lunch Program.

As noted in our earlier letter, States and local educational agencies (LEAs) receiving funding under Title I, Part A of the ESEA must assess and report annually on the extent to which students in schools operating Title I programs are making progress toward meeting State academic proficiency standards in reading or language arts and in mathematics. States and LEAs must also measure and report publicly on the progress of all students, and of students in various population groups, including students who are economically disadvantaged. If assessment results show that any of the groups has not made adequate yearly progress toward meeting State achievement standards for two consecutive years, the LEA must identify that school as needing improvement. All students attending the school must be given the opportunity to attend other public schools that have not been identified as needing improvement, with priority given to the lowest-achieving students from low-income families. Once a school has failed to make adequate yearly progress for three years, the LEA must provide economically disadvantaged students who attend that school the opportunity to obtain supplemental educational services from a non-profit, for-profit, or public provider.

For many LEAs, information from the National School Lunch Program is likely to be the best, and perhaps the only, source of data available to hold schools accountable for the achievement of "economically disadvantaged" students, and also to identify students as eligible to receive supplemental educational services or to receive priority for public school choice. Moreover, in the case of the priority for public school choice and eligibility for supplemental educational services, the law specifically requires LEAs to use the same data they use for making within-district Title I allocations; historically, most LEAs use school lunch data for that purpose. As we outlined in our original letter, school lunch data may be used for these purposes. However, using school lunch data in schools that have implemented Provision 2 or 3 of the school lunch program poses issues that require further explanation, because these schools do not determine free and reduced price lunch eligibility on an annual basis.

The National School Lunch Act allows schools that offer students lunches at no charge, regardless of individual students' economic status, to certify students as eligible for free and reduced price lunches once every four years and longer under certain conditions. These alternatives to the traditional requirements for annual certification, known as "Provision 2" and "Provision 3," reduce local paperwork and administrative burden. The school lunch regulations prohibit schools that make use of these alternatives from collecting eligibility data and certifying students on an annual basis for other purposes. This prohibition has raised issues about how such schools can obtain the data they need to disaggregate Title I assessment data, identify students as eligible for supplemental educational services, and determine which students receive priority for public school choice, all of which Title I requires be done annually.

We have determined that, for purposes of disaggregating assessment data and for identifying students as "economically disadvantaged" in implementing supplemental educational services and the priority for public school choice, school officials may deem all students in Provision 2 and 3 schools as "economically disadvantaged." In addition, when determining Title I eligibility and allocations for a Provision 2 or 3 school, LEA officials may assume that the school has the same percentage of students eligible for free and reduced price lunches as it had in the most recent year for which the school collected that information.

We hope this guidance clarifies this issue. For more detailed information about public school choice and supplemental educational services please see <http://www.ed.gov/offices/OESE/asst.html>.

If we can be of further assistance, please contact one of our offices.

Sincerely,

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Food, Nutrition, and Consumer
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